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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,374	03/22/2004	Edward A. Belbruno	110347.302US4	2611
24395	7590	07/19/2004	EXAMINER	
WILMER CUTLER PICKERING HALE AND DORR LLP THE WILLARD OFFICE BUILDING 1455 PENNSYLVANIA AVE, NW WASHINGTON, DC 20004			GIBSON, ERIC M	
			ART UNIT	PAPER NUMBER
			3661	

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/805,374

Applicant(s)

BELBRUNO, EDWARD A.

Examiner

Eric M Gibson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5,7,9,12 and 17-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 is/are allowed.
- 6) ☒ Claim(s) 5,7,9,12,17 and 19-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/22/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. Reference 5,067,672 (Bouzat) has been incorrectly listed on the IDS as 6,067,672. The applicant has been **repeatedly** advised of this error in prior prosecution and was encouraged to correct it in all future correspondence. The reference has been crossed off the IDS as not considered (see attached). A new IDS containing the correct patent number is required.

### *Specification*

2. The disclosure is objected to because of the following informalities:  
  
In the related applications section of the specification the list of priority applications needs to be amended to include that of U.S. Patent Application No. 10/410,243 has been issued as Patent No. 6,751,531. Appropriate correction is required.
3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5, 7, 9, 12, 17, and 19-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. As per independent claims 17, 19, 35, and 36, the term "at or about" in claims 17, 19, 35, and 36 is a relative term which renders the claim indefinite. The term "at or about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The degree of closeness to the moon, moon orbit or second heavenly location to qualify within the scope of the claimed "at or about" those locations is not ascertainable. See MPEP § 2173.05(b).

b. Claims 5, 7, 9, 12, 20-34, 37-52 are necessarily rejected as being dependent upon a rejected base claim.

c. In addition in claim 19, at line 7, the phrase "at the at or about least one of..." is further indefinite because it is claiming "about least one of" a claim limitation. Either the limitation is in the claim or not, it cannot "about" be a part of the claim language. It is believed that it was intended to be in the same format as in claims 17, 35 and 36, i.e. -- at or about the at least one of...-- which suffers from the indefiniteness discussed above.

***Allowable Subject Matter***

5. Claim 18 is allowed.

a. As per claim 18, the claim is distinct and not subject to a statutory double-patenting rejection from claim 18 of US Patent No. 6,751,531 in that broader language is used in step (a) in the present claim, namely "to converge", than claim 18 of the '531 patent, which states "varying parameters for said method until convergence of the target variables". A terminal disclaimer has been filed to obviate any non-statutory double patenting issues.

#### ***Terminal Disclaimer***

6. The terminal disclaimer filed on 3/22/2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent Nos. 6,751,531 (US Application No. 10/410,243); 6,577,930; 6,442,482; 6,385,512; 6,341,250; 6,278,946; 6,253,124; and 6,097,997 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric M Gibson whose telephone number is (703) 306-4545. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EMG

  
THOMAS G. LEE  
SUPERVISORY PATENT EXAMINER  
GROUP 3600